



**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121 [Docket No. FAA-2012-1239]**

**Interpretation of the Rest Requirements of Nonstop International Supplemental Operations**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Draft Interpretation.

**SUMMARY:** This action provides interested persons with the opportunity to comment on the FAA's draft interpretation regarding nonstop international supplemental operations scheduled for longer than 12 hours. Additionally, this draft interpretation discusses the appropriate international flight time limitations that would apply to the operation. As discussed in the draft interpretation, the FAA finds that the operation of such flights would be precluded under the flight time limitations of the "U.S. mainland rules" found in the supplemental flight and duty rules. However, the operation could be conducted under the "international rules" provisions of our regulations.

**DATES:** Comments must be received on or before [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** You may send comments identified by docket number FAA-2012-1239 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- Mail: Send Comments to Docket Operations, M-30; US Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

**FOR FURTHER INFORMATION CONTACT:** Dean E. Griffith, Attorney, International Law, Legislation and Regulations Division, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-3073; email: dean.griffith@faa.gov.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites interested persons to submit written comments, data, or views concerning this interpretation. The most helpful comments reference a specific portion of the draft interpretation, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposal. Before acting on this proposal, the FAA will consider all comments received

on or before the closing date for comments and any late-filed comments if it is possible to do so without incurring expense or delay.

### **Availability of This Draft Interpretation**

You can get an electronic copy using the Internet by—

- (1) Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- (2) Visiting the FAA’s Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
- (3) Accessing the Government Printing Office’s web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number or notice number of this proposal.

### **Background**

The FAA publishes draft legal interpretations when the matter in question is likely to be highly controversial or the likely answer has the potential to significantly and adversely affect long-standing practices that regulated parties have been engaged in, reasonably believing that these practices were consistent with FAA regulations. The intent is not to seek input on whether the FAA is correct – the FAA has the responsibility for interpreting its regulations. Rather, the reason for publishing the draft interpretation for comment is to see whether there may be unintended consequences for regulated parties that merit a further examination of how the agency’s regulatory provisions should be applied in conjunction with agency policy and guidance material.

We are issuing this draft interpretation because it has come to our attention that supplemental air carriers might be misinterpreting and misapplying the regulations governing flight time limitations for supplemental operations to operate international flight segments longer than 12 hours by reading § 121.509 of title 14, Code of Federal Regulations in isolation, without also complying with § 121.503(a) or, in the alternative, without adequate sleeping facilities for the flight crew as required under § 121.523(b). As discussed below, such a reading fails to consider the full meaning of the FAA's regulations.

## **Discussion of the Proposal**

### **I. Introduction**

The purpose of this notice of draft interpretation is to address whether a supplemental air carrier may conduct an international nonstop flight scheduled for more than 12 hours without crew rest facilities on board the aircraft. The answer is “no.”

For purposes of this interpretation we will use the hypothetical example of a supplemental air carrier that has scheduled four pilots to conduct a non-stop flight lasting 12.5 hours that departs from a point outside of the contiguous United States and arrives at a point in the contiguous United States. The aircraft is type certificated for two-pilot operation.

Supplemental air carriers conducting overseas and international supplemental operations may elect, pursuant to § 121.513, to comply with the flight time limitations of §§ 121.515 and 121.521 through 121.525 (commonly referred to as the “international rules”), rather than the flight time limitations found in §§ 121.503 through 121.511

(commonly referred to as the “U.S. mainland rules”). *See* 14 CFR 121.513. Because this hypothetical flight would operate from a point outside the contiguous United States, the carrier would be eligible to make the election. *See* 121.513(a) (stating that a flight between a “place in the 48 contiguous states . . . and any place outside thereof” qualifies for the election).

We will first evaluate whether the operation could be conducted under the “U.S. mainland rules” and then discuss how the operation could be conducted under the “international rules.”

## II. Flight Time Limitations on Supplemental Operations Conducted Within the 48 Contiguous United States

Section 121.503 sets out the basic flight time limitations and rest requirements for pilots during supplemental operations. Section 121.503(a) establishes that a pilot may be scheduled to “fly in an airplane for eight hours or less during any 24 consecutive hours without a rest period during those eight hours.”<sup>1</sup> The FAA has interpreted the eight-hour period of § 121.503(a) to be a hard scheduling limit on block to block time for supplemental operations without an intervening rest prior to the eighth hour flown. *See* Legal Interpretation to G.L. Davison, from Edward P. Faberman, Deputy Assistant Chief Counsel, Regulations and Enforcement Division (July 17, 1979) (stating that § 121.503 “contains an 8 hour limitation”).

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<sup>1</sup> We note that the term “fly in” as used in the regulation refers to “block to block time” rather than flight deck duty time. *See* 14 CFR § 42.48-1 (1956); Legal Interpretation to Timothy D. Miller, from Donald Byrne, Assistant Chief Counsel (Aug. 27, 1997).

Section 121.503(f) provides an exception to the above 8-hour limit for transcontinental non-stop flights, allowing a crewmember to be scheduled for “more than eight but less than 10 hours of continuous duty without an intervening rest period” under certain conditions.

This exception to the hard limit of 8 hours came about as a result of the improvements in aircraft capabilities and range, which led to the ability to conduct transcontinental non-stop flights. *See* footnote 3. In other words, a flight conducted under the “U.S. mainland rules” cannot be scheduled to be aloft continuously for more than 8 hours unless operating under the exception found in § 121.503(f).

Section 121.509 establishes flight time limitations for four pilot crews in addition to those specified in § 121.503(a). This section provides that, in a 24 hour period, a pilot may not be scheduled for more than 8 hours of flight deck duty, 16 hours of duty aloft, and 20 hours of duty. 14 CFR 121.509(a)-(b). Read in the context of § 121.503(a), a pilot may be scheduled for a total of 16 hours of duty aloft, *but that time aloft must not occur in legs scheduled for longer than 8 hours.*<sup>2</sup> To read § 121.509(a)(2) as permitting up to 16 hours of continuous duty aloft would nullify the prohibition in § 121.503(a) on scheduled operations of longer than 8 hours without a rest period during those 8 hours. Such a reading would not be consistent with FAA legal interpretation and would conflict

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<sup>2</sup> As an example, the following schedule for a four pilot crew in an aircraft type certificated for two pilots would comply with §§ 121.503(a) and 121.509. A pilot is scheduled to report at 0000 for preflight duty. His first flight is scheduled to depart “A” at 0100 and arrive at “B” at 0900 (8 hours of flight time). Assuming that the four pilots evenly divide time at the controls, on that flight he will be on flight deck duty for 4 hours. After the first flight lands he will perform 1 hour of post-flight duty (0900-1000), then rest from 1000 to 1400. From 1400-1600 the pilot will perform preflight duty for his second scheduled flight which is scheduled to depart “B” at 1600 and arrive at “A” at 2359 (7:59 of flight time). Again, assuming that the four pilot crew evenly divides time at the controls, on that flight he will be on flight deck duty for 4 hours. Accordingly, the pilot will have accrued 8 hours of flight deck duty, 16 hours aloft, and performed 20 hours of duty during the 24 hour period in compliance with §§ 121.503(a) and 121.509.

with a fundamental principle of statutory interpretation that specific provisions must be read in the context of the larger rule. *See* Legal Interpretation to Michael Daly, from James B. Minor, Associate General Counsel, Regulations and Codification Division (Jun. 29, 1966) (stating that § 121.503(a)-(f) “contain[s] general flight time limitation provisions that apply to all [part 121] supplemental air carrier or commercial operations under that Part, regardless of the size of the crew”); *see, e.g., United States Sav. Ass’n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) (“A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” (citation omitted)); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-32 (1973) (“It is well established that our task in interpreting separate provisions of a single Act is to give the Act ‘the most harmonious, comprehensive meaning possible’ in light of the legislative policy and purpose.”).

Accordingly, unless the hypothetical operation is scheduled in segments of eight hours or less it cannot be conducted under the flight time limitations contained in §§121.503-.511.<sup>3</sup> In other words, a supplemental carrier would not be able to conduct this operation as a non-stop flight under these sections of the rules.

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<sup>3</sup> We note that operations using the flight time limitations of §§ 121.503 through 121.511 may exceed the 8 hour flight segment time limit under two circumstances. First, transcontinental operations may be scheduled for a continuous flight time of up to 10 hours under an exception to § 121.503(a). *See* § 121.503(f). This exception permits certificate holders to schedule a flight crewmember for a transcontinental non-stop flight consisting of “more than eight but not more than 10 hours of continuous duty aloft without an intervening rest period” if certain conditions are met. In 1954 the Civil Aeronautics Board (CAB) adopted an exception (similar to current § 121.503(f)) applicable to domestic scheduled operations that were then subject to an 8 hour limitation on duty aloft without an intervening rest period. *See* 14 CFR § 40.320(b) (1954) (flight time limitations for domestic air carriers); 19 FR 3759 (June 19, 1954) (adopting SR-405). The CAB stated that the then current, 8 hour rule “prohibits domestic nonstop flight operations of more than eight hours’ duration.” *See* 19 FR 3760. The change was effected to permit

### III. Overseas and International Supplemental Operation Flight Time Limitations

The next question is whether the flight could be conducted under the “international rules” found in § 121.515 and §§ 121.521 through 121.525 if the certificate holder makes that election under § 121.513. In connection with that question is the issue of when and under what circumstances “adequate sleeping quarters” are required.

First, § 121.521 states that an airman may not be scheduled to be “aloft as a member of the flight crew in an airplane that has a crew of two pilots and at least one additional flight crewmember for more than 12 hours during any 24 consecutive hours.” Because the hypothetical flight in question is scheduled to be aloft for 12.5 hours, it could not be conducted with only two pilots and one additional flight crewmember because a certificate holder may only schedule this crew complement for 12 total hours aloft or less.

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non-stop transcontinental flights between the east coast and the west coast which, unlike flights in the opposite direction, could not be completed in the 8 hour period. *Id.* The CAB noted that “if west-bound nonstop service is to be continued to be made available to the public, some modification of the eight-hour rule will be necessary.” *Id.*

In 1955, the CAB established SR-410 which extended the 8-hour rule for supplemental air carriers to 10 hours for transcontinental nonstop flights on “substantially the same basis as they are currently applied to scheduled air carriers.” *See* 20 FR 2675 (Apr. 22, 1955) (establishing SR-410). Therefore, based on the language of § 121.503(f), which is derived from SR-410, it is clear that the maximum time aloft for a nonstop flight would be 10 hours, and only if it meets the requirements contained in the rule. All other flights conducted pursuant to the 121.503-.511 rules would be limited to a maximum 8 hours continuously aloft.

Additionally, when scheduled realistically, flights may exceed the 8 hour continuous flying time limit due to circumstances beyond the control of the certificate holder. In such circumstances, § 121.503(b) requires the pilot to have 16 hours of rest prior to being assigned any duty with the certificate holder. *See* Legal Interpretation to Randall C. Kania, from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (Apr. 29, 2004) (stating that a pilot who has already flown more than 8 hours in a 24-hour period may not take off until he has received the rest required by 121.503(b)); Legal Interpretation to John R. Griffith, from George L. Thompson, Associate Regional Counsel, ANE-7, (Feb. 5, 1975) (stating that the purpose of § 121.503(b) “is to assure an adequate rest period when such deviations do occur”).



Next, § 121.523 establishes the flight time limitations for a crew of three or more pilots and additional airmen as required. Unlike § 151.521, this section allows flights lasting longer than 12 hours. In consideration of the longer flights, § 121.523 requires a crew of at least three pilots and additional airmen as required, provides additional rest provisions, limits flight deck duty time for flight engineers and navigators, and requires the certificate holder to “provide adequate sleeping quarters on the airplane whenever an airman is scheduled to be aloft as a flight crewmember for more than 12 hours during any 24 consecutive hours.” § 121.523(b). Because the operation in question is scheduled with a four-pilot complement, it would meet the crew requirements under this section. However, in order to operate under this provision, the certificate holder would need to comply with all of the provisions of § 121.523, including the need to provide adequate sleeping quarters on the airplane.<sup>4</sup>

#### IV. Conclusion

Therefore, the hypothetical supplemental air carrier operation in which four pilots are scheduled to conduct a non-stop flight lasting 12.5 hours, between a point outside the contiguous United States and a point in the contiguous United States, or other locations

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<sup>4</sup> The FAA has consistently interpreted “adequate sleeping quarters on the airplane” to mean a bunk or a berth, but that it is a matter of safety policy to consider each air carrier's means of compliance on its individual merits. *See* Legal Interpretation to Daniel J. Wells, from Donald P. Byrne, Assistant Chief Counsel for Regulations (Sept. 22, 2003); Legal Interpretation to William W. Edmunds, Jr., from John Cassady, Assistant Chief Counsel, Regulations and Enforcement Division (Apr. 22, 1986). A passenger seat, even if it reclines, is not considered to be adequate sleeping quarters. *Id.*

permitting the § 121.513 election, could only be operated under the flight time limitations of § 121.523 (including the required crew rest facilities on board the aircraft). It could not be conducted as proposed under the provisions of §§ 121.503, 121.509 or 121.521.

Issued in Washington, DC, on March 25, 2013.

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